IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3462 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SUMANBEN W/O RAMESHBHAI RAMDASBHAI SALUKE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 3462 of 2004

MS SUBHADRA G PATEL for Petitioner No. 1

MR AD OZA, LD.GOVT PLEADER for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 15/07/2004

ORAL JUDGEMENT

1. By filing this petition, the petitioner-detenue has challenged the detention order passed against her by the detaining authority, by its order dated 5.1.2004

under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 ("PASA", for short). The petitioner is detained as a "bootlegger" under PASA. Along with the order, the petitioner was also served with the grounds of detention.

2. In the grounds of detention, there is a reference of two criminal cases, which are pending against the petitioner at Varacha Police Station, Surat. The aforesaid cases are registered against the petitioner under the Bombay Prohibition Act. It is alleged that, the petitioner is dealing in foreign liquor. After recording subjective satisfaction, and after considering the statements of the witnesses, whose names have not been disclosed to the petitioner, the detaining authority has detained her under PASA. The said detention order is challenged by the petitioner by way of this petition.

3. At the time of hearing of this petition, learned Advocate for the petitioner has submitted that, the allegation against the petitioner is that, she is dealing in foreign liquor, and there are only two criminal cases registered against her for alleged breach of the Bombay Prohibition Act, and that itself is not sufficient for coming to the conclusion that the petitioner is disturbing the public order.

4. Learned Advocate for the petitioner further submitted that, the petitioner has made a representation to the Home Minister on 11.2.2004. The said representation was received by the department on 12.2.2004, and the department has forwarded the same to the concerned branch on 1.3.2004, and ultimately it was decided on 4.3.2004 and, therefore, there is considerable delay in forwarding the representation of the petitioner. There is no proper explanation given by the authority regarding delay between 12.2.2004 and 1.3.2004, the date on which the representation was forwarded to the appropriate branch. and, therefore, on the said ground, this petition is required to be allowed. Though the point of delay is already taken in the petition, in the affidavit-in-reply, there is no proper explanation dealing with such delay.

5. In this behalf, the learned Advocate for the petitioner has relied upon an unreported decision of this Court (Coram : A.L. Dave, J.) in Mulshankar Kalyanbhai Jani v. State of Gujarat, rendered in Special Civil Application No.9664 of 1999, on 16.3.2000, wherein on the ground of unexplained delay in despatching the representation, this Court has set aside the detention

order. In paragraph 6, this Court has observed as under :-

"para 6. Having regard to the rival side contentions, the first factor that catches attention is the delay caused in forwarding the representation by the detaining authority. Admittedly, the representation made on behalf of the detenu was received on 16.11.1999. The detention was approved on 12.11.1999 and, therefore, the detaining authority was only expected to forward the representation to the State Government. The representation is forwarded on 18.11.1999. The detaining authority has not explained as at what point of time, the representation was received on 16.11.1999 and how it was dealt with on 17.11.1999 and, therefore, taking a liberal view that the representation may have been received on 16.11.1999 by evening, then also, the time consumed in forwarded till 18.11.1999 remains unexplained, i.e. there is no explanation coming forward as to what was done in respect of the representation on 17.11.1999. For this one day, probably, the representation remained unattended. This inaction and want of attention to the representation can be considered as sufficient to have infringed the right of the detenu of making an effective representation."

6. In view of the aforesaid facts and circumstances of the case, and in view of the fact that, even the concerned authority has not despatched the representation to the appropriate branch in time, and the detaining authority has not properly explained the delay and, therefore, under these circumstances, since the representation was not immediately despatched by the authority to the appropriate branch, this petition is required to be allowed and it is allowed, as it is a settled position that the representation is required to be dealt with promptly.

7. In view of what is stated above, this petition is allowed. The order of detention dated 5.1.2004 is quashed and set aside. The detenue, Sumanben w/o Rameshbhai Ramdasbhai Saluke, is ordered to be set at liberty forthwith, if she is not required in connection with any other case. Rule is made absolute.

(P.B. Majmudar, J.)

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